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16 **UNITED STATES DISTRICT COURT**  
17 **NORTHERN DISTRICT OF CALIFORNIA**  
18 **OAKLAND DIVISION**

19  
20 EPIC GAMES, INC.,  
21 *Plaintiff, Counter-defendant,*  
22 v.  
23 APPLE INC.,  
24 *Defendant, Counterclaimant.*

Case No. 4:20-cv-05640-YGR-TSH

**EPIC GAMES, INC.'S ADMINISTRATIVE  
MOTION TO FILE UNDER SEAL  
SUPPORTING EXHIBITS A AND B TO  
THE JOINT DISCOVERY LETTER  
BRIEF REGARDING EPIC'S REQUESTS  
FOR PRODUCTION OF DOCUMENTS**

Judge: Hon. Magistrate Thomas S. Hixson

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28 EPIC GAMES, INC.'S ADMINISTRATIVE MOTION TO FILE UNDER SEAL SUPPORTING EXHIBITS A AND  
B TO THE JOINT DISCOVERY LETTER BRIEF REGARDING EPIC'S REQUESTS FOR PRODUCTION OF

DOCUMENTS  
Case No.: 4:20-cv-05640-YGR-TSH

Pursuant to the Court’s order to file certain documents (Dkt. 216), Epic Games, Inc. (“Epic”) brings this administrative motion under Civil Local Rules 7-11(a) and 79-5(d)-(e) for an order granting Epic leave to file under seal Supporting Exhibits A and B to the Joint Discovery Letter Brief Regarding Epic’s Requests For Production Of Documents (the “Supporting Exhibits”).

Civil Local Rule 79-5 provides that documents, or portions thereof, may be sealed if a party “establishes that the documents, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law.” Civ. L.R. 79-5(b). Under this standard, a party seeking to seal a document generally must overcome the “strong presumption in favor of access” that applies to court documents other than those that are traditionally kept secret. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citations omitted). However, the “public has less of a need for access to court records attached only to non-dispositive motions because those documents are often ‘unrelated, or only tangentially related to the underlying cause of action.’” *Id.* at 1179 (citations omitted). Instead, a “‘good cause’ showing under Rule 26(c) [of the Federal Rules of Civil Procedure] will suffice to keep sealed records attached to non-dispositive motions.” *Id.* at 1180; *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, 2013 WL 3014144, at \*1 (N.D. Cal. Jun. 17, 2013). A party seeking to seal such material must make a “particularized showing of good cause with respect to any individual document.” *San Jose Mercury News, Inc. v. U.S. Dist. Court, N. Dist. (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1999). Sealing requests must also be “narrowly tailor[ed].” Civ. L.R. 79-5(b).

Subsection (e) of Local Rule 79-5 sets forth procedures that apply when a party seeks to file information designated as confidential by an opposing party. This Administrative Motion is based on Defendant Apple Inc.’s (“Apple”) designation of information in the Supporting Exhibits as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the protective order in the above-captioned action. (Dkt. 112.) Epic does not believe that the Supporting Exhibits meet the standard for sealing. Pursuant to subsection

(e)(1) of Local Rule 79-5, Apple has four days to file a declaration establishing that all of the designated material is “sealable” (as defined in Local Rule 79-5(b)).

Dated: December 29, 2020

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Respectfully submitted,

By: /s/ Lauren A. Moskowitz

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